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10/018,115	06/14/2002	Henricus Wilhelmus Theodorus Janssen	EF377397961US	1559

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30 Rockefeller Plaza  
New York, NY 10112

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/018,115

Applicant(s)

JANSSEN, HENRICUS  
WILHELMUS THEODORUS

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-12, 16-18 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-12, 16-18 and 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7, 9-12, 16-17, 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,311,700 to Thomas in view of Netherlands Patent NL 8700470 to Dekker.

Regarding Claims 1, 9-12, 16, and 26, Thomas teaches a method of manufacturing a plant support manufactured having an at least partially open wall, the box-shaped element (Thomas #30) being at least partially covered with a preferably substantially biodegradable covering material (Thomas #44), the covering material being provided in such a manner that it covers the partially open wall at least partially, such that the wall becomes soil-proof (Thomas Col. 2 line 2 and Col. 5 line 13-14 and 22-23), while roots of a plant, growing in the pot during use, can grow at least partially through the covering material and the wall to the outside of the plant support, characterized in that as covering material a material is manufactured from biodegradable material.

Thomas is silent on a substantially vertically extending guide element mounted on the box-shaped element. However, Dekker teaches a substantially vertically extending guide element mounted in combination on a box-shaped element (Dekker

Fig. 4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since it is old and notoriously well-known in the art of plant husbandry to provide vertical support for plant to control the shape of the plant and to prevent the plant from bending and resulting in damage to the plant stem.

Regarding Claim 2, Thomas as modified teaches the box-shaped element is at least substantially manufactured from material having a mesh-shaped structure (Thomas abstract line 3).

Regarding Claim 3, Thomas as modified discloses the box-shaped element is substantially manufactured from wire material (Thomas Col. 3 line 47).

Regarding Claim 7, Thomas as modified is silent on the covering material is woven into the wall of the box-shaped element. However, applicant does not provide any criticality for the woven nature of the covering material in the specification. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering/manufacturing design choice to enhance the aesthetical appeal of the container by creating a weaved pattern or as a means to keep the liner in place to prevent any undesirable shifting during transport and does not present a patentably distinct limitation.

Regarding Claim 17, Thomas as modified teaches that the covering material during use at least temporarily prevents roots growth to the outside of the element (Thomas Col. 5 line 1-11 and 15-20).

Regarding Claims 21 and 27, Thomas as modified teaches the mesh shaped guide element (Dekker Fig. 4), but is silent on the box-shaped element and the guide

element are manufactured in one piece. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of a known manufacturing method to meet certain design cost parameters and manufacturing something as an integral piece for ease of shipping, etc. does not present a patentably distinct limitation

Regarding Claim 22, Thomas as modified teaches the plant support is demountable (Dekker Fig. 4).

Regarding Claim 23, Thomas as modified teaches the guide element is detachably mountable adjacent the bottom of the box-shaped element (Dekker Fig. 4).

Regarding Claims 24, 28, and 29, Thomas as modified teaches the number of box-shaped elements plurality and the positional arrangement (Dekker Fig. 4). Thomas teaches that the container element can be used both above or below ground and Dekker is merely cited in this instance to teach that the container elements can be juxtaposing to form a closed hedge and the height of the guide is the vertical height corresponding to the desired height of the hedge.

Regarding Claim 25, Thomas as modified inherently teaches a plurality of plants (Dekker Fig. 4).

Regarding Claims 30 and 31, Thomas as modified does not explicitly teach the step of clipping plants above the upper edge of the guide element or plant don't grow above the guide element. However, these steps are available knowledge to one of ordinary skill in the art. It is old and notoriously well-known in plant husbandry to shape plants in various configurations, this art is known as topiary or plant sculpturing. Also,

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plants (e.g. grape vines) are groomed at the top to encourage the plant to grow full and bushy. The desired height is a subjective choice, some people like there hedges higher then others for more privacy or for an aesthetic design (merely cited as an example of this known knowledge U.S. Patent No. 679,976 and U.S. Patent No. 502,058).

Claims 4, 5, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,311,700 to Thomas in view of Netherlands Patent NL 8700470 to Dekker as applied to claim 1 above, and further in view of U.S. Patent No. 3,958,365 to Proctor.

Regarding Claims 4, 5 and 18, Thomas as modified teaches a polyurethane liner but is silent on the covering material is manufactured from at least natural fibers (i.e. coco fibers) and binding agent (i.e. latex). However, Proctor teaches a wire basket liner (Proctor Col. 2 line 64-65) made of coco fiber and latex (Proctor Col. 2 line 40 and 33) and that the liner of Proctor is in fact a polymer liner (Proctor 3 line 49). It would have been obvious to one of ordinary skill in the art to modify the liner teachings of Thomas with the natural fiber teachings of Proctor for the efficient means of conserving moisture in the soil in which plants grow (Proctor Col. 1 line 29-30) since the modification is merely an alternate plastic/polymer liner that contains soil and permits the growth of roots through the liner.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 9-12, 16-18, and 21-31 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to look to the teachings of Dekker to modify the teachings of Thomas. First, Thomas does not merely teach trees, but also teaches small shrubs, plants, and nursery plants (Thomas abstract line 1; Col. 1 line 10; and Col. 5 line 43). Thomas does not teach away from a support merely because the selected plant can be a tree as argued by applicant. Even trees are notoriously known to have supports. Second, utilizing vertical supports, stakes, trellises, etc. are notoriously well-known knowledge available to one of ordinary skill in the art of plant husbandry. It is old and notoriously well-known to support growing plants and trees with vertical support so that the maturing plant grows straight. The support is used sometimes to form an aesthetic/topiary design and/or it has a functional use to prevent the stem/trunk from snapping in high winds or to produce a straight tree/plant. Supports are sometimes used to prevent the plant/tree from breaking under the weight of its branches or fruit. Therefore, merely modifying a plant container with a vertical support is knowledge that is generally available to one of ordinary skill in the art and is accepted wisdom in the art with a proven motivation of successful plant growth. Cited merely to provide support for the argument that it is notoriously well-known to support plants and trees, U.S. Patent No. 4,649,666; U.S. Patent No. 4,881,342 (Col. 1 line 40-42); and U.S. Patent No. 5,473,839.

Examiner maintains that Thomas does teach the biodegradable limitations presented by applicant. Applicant merely claims that the "box shaped element being at least partially covered with a substantially biodegradable covering material". Thomas

teaches that when the container device is planted in the ground element #44 does biodegrade (Thomas Col. 6 line 12-27) and Thomas teaches using wood as a covering material (Thomas Col. 4 line 58-66). Thomas teaches a preference for polyurethane, but the invention is not limited to this material selection.

Examiner maintains that Thomas as modified by Dekker inherently teaches that the guide element can be demountable. Applicant has merely claimed that the guide is demountable. It is the examiner's position that any accessory element is demountable, if it is wire it can be cut, if it is wooden it can be cut, if it is plastic it can be snapped off, etc. Applicant has not provided any teachings of a structural feature or connection that facilitates the demounting of the guide. Furthermore, making something integral or making something separable are merely obvious modifications to one of ordinary skill in the art as engineering design choices and do not provide patentably distinct limitations [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)].

Examiner maintains that Thomas as modified by Dekker does in fact teach that one or more plants are on both sides of the vertically extending guide. Dekker Fig. 4 that some of the vines on element #6 on the left intertwine with element #6 on the right. Furthermore, applicant has merely claimed that one or more plants is guided on both sides of the guide element and Dekker Fig. 4 clearly illustrates how the plant is guided through both sides of the guide member.

Applicant argued that Cahill U.S. Patent No. 994,816 does not teach that the wire basket is planted in the ground. However, examiner would like to point out that Cahill does in fact teach that the plant remains in the wire container and that the wire



container and plant are both inserted in the ground (Cahill page 1 line 100-105 and page 1 line 84).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,881,342; U.S. Patent No. 5,473,839; U.S. Patent No. 4,649,666; U.S. Patent No. 679,976; and U.S. Patent No. 502,058.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

25 January 2005



Peter M. Poon  
Supervisory Patent Examiner  
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